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HARNESS, DICKEY, & PIERCE, P.L.C
7700 BONHOMME, STE 400
ST. LOUIS, MO 63105

EXAMINER

ZURITA, JAMES H

ART UNIT PAPER NUMBER

3625

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/543,764

Applicant(s)

HOWES, JOHN L.

Examiner

James H Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4, 6-50 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 10/15/04
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant submitted an amendment on 14 July 2004, amending claims 1, 3, 17, 18, 20, 23-25, 31, 33-35 and 37-39. Applicant added claims 40-50.

Response to Arguments

Applicant's arguments filed 14 July 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that *Distributor Roles* fails to recognize certain advantages (page 16 of amendment), the fact that applicant has recognized other advantage(s) which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant questions why his allegedly obvious invention has not been implemented by others. Applicant's arguments appear to be directed to secondary considerations to overcome obviousness rejections. Secondary considerations to overcome obviousness rejections need to be submitted under 37 CFR 1.132. Applicant's comments refer only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is objective evidence of nonobviousness commensurate in scope with the claims. See MPEP § 716.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner respectfully recommends at least the following changes:

step	from	to
Preamble	...particular, custom, colors...	...custom colors...
operating	...capable of producingto produce...
operating	...quantity that is not ...and pints...	...liters...
operating	...particular, custom, colors...	...custom colors...
operating	...with a precision...local retailer	

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 6, 44-50 are rejected under 35 U.S.C. 103(a) as being *unpatentable* over a publication entitled Web Ordering May Alter Role of Distributors, published by National Home Center News, v. 24, n. 10, p. 23-25, on June 22, 1998, by Carol Tice (*Distributor Roles*), in view of an article entitled *Lowe's Launches New Superstore in N.E. Dallas, TX* (hereinafter *Lowe's Superstore*), published on 10 February 1998 on PR Newswire.

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Distributor Roles discloses electronic business methods where customers may order customized products from a supplier who may ship the products directly to customers. The steps include:

- (a) **accepting** from at least one consumer of a customer order placed directly with a supplier that is separated by a space of interval greater than usual (applicant's **remote supplier**, see definitions, above) specifying customer order information including indication of a quantity, delivery address and identification of the customer;
- (b) **entering** customer order information into a customer order subsystem;
- (c) **compiling** customer order information with a computer and
- (d) **processing** the results of this compilation with a production subsystem to yield production parameters;
- (e) **operating**, in observance of the production parameters yielded by the production subsystem, a production line;
- (f) **assembling** product resulting from said production line fulfilling at least one individual customer order and
- (g) **packaging** the resulting assemblage as required for shipment;
- (h) **causing** the transporting of each said assemblage of product fulfilling each said customer order to the delivery address specified by the consumer in [**accepting** ...step] the customer order,
- (i) whereby each said consumer obtains delivery of product directly to a specified address

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Distributor Roles, See at least page 3, *The future that's already here*, describing placing orders for home improvement products, including customized products, entering customer order information into a customer order subsystem comprised of software maintained on a computer. See also at least references to special order, page 2, paragraph 8. For operating a production line, see at least page 3, line 2, which describes product assembly. See also at least page 3, paragraph 4, describing drop-shipments. See also at least page 4, *Delivering the Goods*. See rejection of claims 21, 22, 26-28 for discussion of integration of customer order, production and other sub-systems in client/server environments.¹

Customers may order home improvement products on the Internet, by entering data and product details (page 3, paragraph 12). See at least page 3, paragraph 5, which describes that even the bulkiest home improvement products may be ordered and ultimately delivered. See also at least page 3, paragraph 1, which describes that orders may be taken electronically and that products may be shipped directly from manufacturers to consumers. *Distributor Roles* also describes that orders may be processed for many product lines (page 2, paragraph 10) of many manufacturers.

Containerized liquid coating products, like most liquids, require *containerization*. Liquid products may include adhesives, cleaning fluids, colorants, disinfectants, epoxy resins, lubricating oils, paints, pesticides, plumbing supplies, sealants, shellacs, soaps, stains, varnishes, etc. Containers may be produced from various materials, including glass (e.g. for hydrochloric

¹ Applicants appear to concede the above: see applicant ion "production lines", pages 4-6 and 7-

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acid and other corrosive fluids), metals (e.g., canned pineapple juice, paint, beans), rubberized fabric (as in camping canteens), molded plastic (e.g., as in orange juice containers, detergents, paint, bottled water), hybrid containers (e.g., plastic-covered metals for soft drinks, plastic-coated cartons such as used for milk, orange juice, etc.) as well as expansible molded plastic containers such as for carrying water on a camping trip. The various types of containers have different levels of expansibility: from the molded materials themselves, or built-in, such as with a bellows-type arrangement, or such as one finds in a hot-water bottle, or even such as one finds in a zip-lock bag common in supermarkets. Containers can be expansible by the nature of the material used, whether they are made of metal, molded plastic or some other material.

Plastic may be preferred over rigid metal containers because plastic containers often weigh less than their metal counterparts. Lower weight of a container translates into reduced shipment and delivery costs. In addition, a container that is partially filled weighs less than if it were fully filled with a liquid coating. Reduction in weight also lowers shipping and delivery charges. For example, a 10-thousand gallon container of liquid coating product would normally require thicker walls than the walls of a container designed to transport a 1-ounce, 1-gallon or 55-gallon volume of the same liquid coating product. While bulk-shipments may reduce shipping costs, shipping is often based on weight, including the weight of individual metal, glass or plastic containers. Thick, rigid metal containers may weigh more and may cost more to ship than

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plastic equivalents. Similarly, thicker plastic containers may weigh more and cost more to ship than thinner plastic containers. Collapsible plastic containers would most likely weigh less than rigid walled plastic containers, and may cost less to deliver.

Lowe's Superstore discloses that home improvement retailers (e.g., HOME DEPOT, LOWE's) sell over 40,000 related home improvement products, including special order, ***custom products such as custom paints***.

Therefore, it *would have* been obvious to one of ordinary skill in the art at the time the invention was made to disclose ordering, production, packaging and delivery of liquid coatings among other types of products. One of ordinary skill in the art in the art at the time the invention was made *would have* been motivated to include ordering, production, packaging and delivery of liquid coatings among other types of products for the obvious reason that liquid coatings are another type of product that is in great demand by customers for home improvements and for home building.

Liquid coatings are often delivered to construction sites and customer addresses (drop-shipments). Very large orders may be shipped to other manufacturers (for example General Motors may order several rail cars of customized liquid coating product for a run of several thousand cars). Builders of apartment buildings may also request large orders deliverable via railroad, trucks, and other shipment methods.

Distributors may benefit from becoming electronic clearinghouses, as taught by *Distributor Roles*. Distributors would cut their operational costs since

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they would not have to receive, store and ship product orders. Distributors would not have to maintain an inventory of containerized, fixed colors. Distributors can provide their customers with economic benefits associated with of just-in-time inventory, which reduces inventory costs to customers.

Distributor Roles and *Lowe's Superstore* **do not** specifically disclose that liquid coating products may be containerized in rigid metal paint cans (as in claim 2), or that rigid metal paint cans may be partially filled (as in claim 3), or that liquid coating products may be containerized in molded plastic expandable containers (claim 4) or that molded plastic expandable containers may possess a collar about an aperture which collar is gripped during operation of said production line (claim 6).

It was well known to those of ordinary skill in the art at the time the invention was made that partial filling of a container produces savings at least in (a) manufacturing and (b) delivery. In manufacturing, manufacturers and distributors may save money when they acquired materials such as plastic and metal for their containerization and production lines. When production costs are lowered, manufacturers and distributors can charge less for their products and pass part of the savings to their customers, and still increase their profits. Lower production costs allows better use and allocation of scale production and allow for better utilization of natural resources. Better natural resource use and allocation also permits less contamination and provides everyone on the planet with a healthier environment.

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In delivery, manufacturers and distributors can also save money in shipping and delivery. Identical volumes of a liquid would weigh less when they are placed in plastic rather than in metal containers. Liquid coatings in plastic containers cost less to deliver to a customer site than in metal containers. One would want to partially fill a plastic or metal container because doing so cuts down the cost of shipping and delivery, thereby reducing the overall price to a consumer. Where liquid coating is in an expansible container, the container will take up less storage space. This translates into reduced storage costs for the party placing the order.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose that liquid coating products may be held in rigid metal paint cans which may be partially filled and in molded plastic expansible containers which possess a collar about an aperture whose collar is gripped during operation of the production line.

One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that liquid product may be containerized in rigid metal paint cans, and in molded plastic expansible containers, that the rigid metal paint cans may be partially filled and that the expansible containers possess a collar about an aperture whose collar is gripped during operation of the production line for the obvious reason manufacturers and customers want to reduce the costs incurred to engage in business. Cost savings translates into greater profit for manufacturers; costs savings also reduces prices that

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customers pay. The savings can occur in several places, including (a) manufacturing and (b) delivery, as shown above.

One of ordinary skill in the art at the time the invention was made would have known that placing a liquid into a molded plastic container might be done by filling the container through an aperture that is simultaneously held by a gripping mechanism. Doing so assures that the bulk of the liquid is properly transferred into a container, thereby eliminating waste of the liquid and preventing the liquid from spilling and interfering with the operation of production machinery. Additionally, gripping a container by a collar facilitates placement of a sealing top on the container.

Distributor Roles and Lowe's Superstore **do not** specifically disclose accepting ...a liquid coating base, a color. The Examiner takes official notice that specifying a color and a base are important in selecting and ordering paints. For example, different persons may like different colors, and it would be appropriate for these persons to request a color they like. A liquid coating base is also an important aspect of applying paint. For example, one would likely prefer to use an oil base for exterior and severe weather conditions. A water base might be preferred for indoor use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Distributor Roles and Lowe's Superstore and knowledge generally available to one of ordinary skill in the art to disclose accepting a color and a base for an order of containerized liquid coating products. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Distributor Roles

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and Lowe's Superstore and knowledge generally available to one of ordinary skill in the art to disclose accepting a color and a base for an order of containerized liquid coating products for the obvious reason that customer satisfaction is important in everyday business, particularly a business that deals with producing customized products.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

Distributor Roles and *Lowe's Superstore* disclose identifying products for assembly and delivery (page 3, paragraph 1, describing that orders may be taken electronically and shipped directly from manufacturers to consumers; page 3, paragraph 4, describing drop-shipment; page 4, Delivering the Goods). Shipment and delivery often require information of where to deliver a package (or a container, for liquid home improvement products).

Distributor Roles and *Lowe's Superstore* disclose customer ordering, shipping and delivery of home improvement products, including liquids such as paints. Shipping and delivery requires identifying packages with customer order information such as at least customer name, street address, city, zip code. Packages often have product information such as at least supplier inventory code(s) to identify the product, type of product and other attributes of a product. Other data may include delivery date, quantity of a product, number of packages in a shipment. The information is often printed on adhesive labels that are attached on packages. The label may contain information in human-readable

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print format. The label may also contain information printed as bar code, for scanning.

Shipping and delivery requires the identification of *to* and *from* information on a package. Where many shipments take place, it is most cost effective to use labels and attach them to a package. Labels often contain customer order information such as the contents of a package, the delivery destination and name of recipient. Labels often include bar codes that can be scanned. Suppliers place various types of information on labels to track inventory and to provide information to delivery services to get a product to its destination. (See also rejection of claims 7-10 in First Office Action). A package may be impossible to deliver without proper identification on the package.

Distributor Roles and *Lowe's Superstore* **do not** provide details concerning how packages and shipments are specifically labeled. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply product identification features to shipments of liquid coating home improvement products. One of ordinary skill in the art at the time the invention was made would have been motivated to apply product identification features to shipments of liquid coating home improvement products for the obvious reason that doing so allows containers of liquid coating home improvement products to become part of the normal stream of commerce. While detailed information varies according to product, in the case of liquid coating products, the label may include the name of the color in the containers.

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Containers of liquid coatings often have their contents printed on labels. For liquids coatings such as stains or polyurethanes, the contents might be described as glossy or semi-gloss cherry color. Paints are another type of liquid coating. Paint containers might have printed labels with name of a color, as well as other features (e.g., flat, glossy, latex, water-based, etc.). In addition, it is common to see an actual color displayed on a container, to further avoid confusion. The printed label enables human identification of contents of a container. Proper identification of a package and its contents is critical for reducing errors, cutting costs and increasing customer satisfaction. Increased customer satisfaction often results in increased purchases and increased profits for entities in a supply chain such as above.

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore* and disclosed *prior art*.

Distributor Roles and *Lowe's Superstore* disclose that home improvement products, including paints, may be sold from a manufacturer to distributor(s) as well as to customer(s). Delivery can be to a contractor at a job site of to customers (*Distributor Roles* page 3, paragraph 1, describing that orders may be taken electronically and shipped directly from manufacturers to consumers; page 3, paragraph 4, describing drop-shipments; page 4, Delivering the Goods).

Distributor Roles and *Lowe's Superstore* **do not** provide details of operating a production site that fills rigid metal paint cans or expansible containers made out of molded plastic. *Distributor Roles* and *Lowe's Superstore* **do not** state that operating a production line may include addition of blended

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liquid coating base to an empty container (claim 11), or that blended liquid coating base may be obtained from a manufacturer in large containers ranging in volume from fifty-five gallon barrels through railroad tank cars inclusive of 1,000 liter totes (claim 12), or that one may use a pipeline to transfer liquid coating base from large containers to a tank from which the liquid coating base is dispensed (claim 13) or the method would include a step to identify the type of liquid coating base added upon the container (claim 14), or that that operation of a liquid coating production line includes the addition of colorant to a blended liquid coating-base (claim 15), or that the method would include a step of identifying the name of the color resulting from the colorant added upon the container (claim 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose that manufacturers may ship liquid home improvement products directly to distributors and customers in 55-gallon barrels or railroad tank cars (as in claim 12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to describe that the liquid product is transferred from a manufacturer's container to a tank for dispensing said liquid (as in claim 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include steps for identifying the type of liquid coating base added upon the container (claim 14), adding colorant to the blended liquid coating base (claim 15) and identifying the resulting color (claim 16).

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One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that manufacturers may ship liquid home improvement products directly to distributors and customers in 55-gallon barrels or railroad tank cars (as in claim 12) for the obvious reason that bulk purchases from a manufacturer is known to lower the overall costs of producing goods. By achieving economies of scale, manufacturers and distributors save money. Savings may be passed in a distribution chain, benefiting all parties and creating jobs and financial opportunities.

One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that liquid products may be transferred from a manufacturer's container to a tank for dispensing said liquid (as in claim 13) for the obvious reason that raw materials must be integrated into a manufacturing process and a first step of doing so includes identifying and using the materials received from a manufacturer. While one can always integrate outside containers into a manufacturing process, it may be necessary to first transfer the product into the specific product line. While terms of product delivery will vary by industry, offloading a railroad tank, for example, could mean that a railroad tank may be leased only for a short length of time, cutting down overall production costs to everyone involved. This savings can be used to improve marketing, or may be passed directly to customers, or may be kept as profit by entities along a supply chain.

Claims 17-20 and 23-25, 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

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Distributor Roles discloses various ways for customers to connect to remote suppliers and place product orders into customer order subsystems; *Lowe's Superstore* discloses liquid coatings such as paint. In *Distributor Roles*, see at least Connectivity to the Internet, pages 5-6, via hand-held portables such as cell-phones (as in claim 17), PDA's and other types of Internet devices (as in claims 23, 24). See also at least page 2, paragraphs 8, 9 describing that customers may use an Internet-wired kiosk (i.e., an example of a dedicated terminal with Internet access only to a web site maintained by the remote supplier, as in claim 25), universal datatone for telephone, fax (as in claim 20, see at least page 1, paragraph 3, and page 3, paragraph 11), data, smart phones, Web-TV. *Distributor Roles* discloses ordering via telecommunications (as in claim 17), via telephones connected to a public telephone exchange (as in claim 18) in disclosing the use of the public telephone system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Distributor Roles* and *Lowe's Superstore* and disclose electronic ordering for liquid coatings. One of ordinary skill in the art at the time the invention was made would have been motivated to combine the teachings of *Distributor Roles* and *Lowe's Superstore* and disclose electronic ordering for liquid coatings for the obvious reason that liquid coatings are an integral part of home improvement products. Using existing order systems for another type of home improvement product builds on already proven systems and technologies. Suppliers can continue to use reliable human-computer interfaces; customers in turn can benefit since they do

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not have to connect to different systems for different home improvement products. Suppliers can same money, and customers may purchase other types of products that may be needed at home.

Claims 21, 22, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

Distributor Roles discloses an interactive network of clients and server machines in the form of customer order subsystems, production subsystems over the Internet. *Distributor Roles* describes client/server network architecture with multiple nodes.²

Distributor Roles and *Lowe's Superstore* **do not** specify configurations for distributing a production and a customer order subsystems are distributed across the various networks that make up the Internet. *Distributor Roles* and *Lowe's Superstore* disclose the claimed configurations of this application except for explicit disclosure as to physical and logical location of each node on a network.

Each computer or process on the network is either a client or a server. The word server may refer to a physical machine or the software that performs server tasks. In a network, one may place one or more server systems or subsystems on the same or different physical computer. The configuration takes into consideration different needs of a merchant's system as a whole. On a system with heavy Internet volume, for example, it might make sense to have

² client server architecture is a network architecture in which each computer or process on the network is either a client or a server. Servers are powerful computers of processed dedicated to managing disk drives, printers or network traffic. Clients are PCs or workstations on which users run applications. Clients rely on servers for resources, such as files, devices and even

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separate logical or physical machines to handle Internet traffic. One does this to decrease the amount of time users must wait for a merchant's response.

Merchants lose sales and money when users are forced to wait. Users tend to avoid sites that make them wait.

A merchant's site might have a node to handle its customer orders. The node might contain one or more logical or physical machines that process customer requests via application programs. The same merchant might have a separate node to handle database activity, since I/O operations are relatively slow. A merchant may use names that relate to a server's function. For example, a subsystem that handles user requests might be called a front-end system, a customer node, a merchant node, a customer application system, or a merchant node. Similarly, a merchant might use the term customer database system to refer to the node that access information from a customer database and prepare it for a production subsystem. The names applied to systems and sub-systems tend to be descriptive, easily recognizable to humans. The names do not affect what the machines do.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Distributor Roles, Lowe's Superstore and knowledge generally available concerning networks to disclose placing a node in any configuration on a network. One having ordinary skill in the art at the time the invention was made would have been motivated to combine Distributor

processing power. (Definition of Client/Server Architecture, Computer and Internet Dictionary, Random House/Websters, third edition).

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Roles, Lowe's Superstore and knowledge generally available concerning networks to disclose placing a node in any configuration on a network for the obvious reason that it is important to balance loads on a network and permit customers to place orders without delays. Merchants lose sales and money when users are forced to wait. Users tend to avoid sites that make them wait.

***Claims 29-34** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore* and further in view of an article entitled "Welcome Homes on the Virginia Beach Tour – Visit a premier colonial revival-style home, painstakingly built and restored", (**Colonial Restoration**) by Ann Wright, published on 19 April 1998, *Virginian – Pilot*, Norfolk VA, downloaded from the Internet on 16 October 2002.*

Distributor Roles and Lowe's Superstore disclose web sites that provide product information to assist customers in selecting home improvement products, including liquid coating products (claim 29). On a web site, customers input information that defines the product sought (as in claim 31). It was well known to one of ordinary skill in the art at the time the invention was made that the type of digital data exchanged on the Internet may include text, images, sound, video, photograph and modeling data (as in claim 34). *Lowe's Superstore* discloses that customers may place special orders and may carry out computerized color matching.

Distributor Roles and *Lowe's Superstore* **do not** specifically describe details such as identification of a plurality of particular, custom colors nor where assisting in the selection of a liquid coating product includes liquid based

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characteristics nor selection of liquid coating product appropriate to a given job as defined by information input by the customer, nor recommending a liquid coating base nor calculating volume for a given application as defined by customer input, nor that assistance in the selection of liquid coating product includes the suggestion of at least one particular, custom color based upon digital input by said customer, said digital input including but not limited to digital video input, digital photograph and digital solid modeling input.

Liquid coatings come in different colors. Customers' color tastes vary. Liquid coatings also have properties that allow them to perform better indoors or outdoors. Larger rooms and physical areas often require more paint than smaller spaces. The amount of water-based paint required for a child's bedroom, for example, is much less than the volume of a latex-based paint that one would need to paint the outside of a single-family home. It was well known at the time the invention was made that sites offered assistance to customers to place orders. For example, sites help in product selection, color selection, calculation of volume required as determined by the size of the surface to be covered. Sites often help customers select a store.³

Colonial Restoration discloses paint customization and matching for historical restorations. Colonial Restoration describes the use of custom colors for formulas that are no longer in production (see at least page 2, last two paragraphs).

³ Applicant also appears to concede this, as in page 4 of the specifications.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to include plurality of custom colors, specific characteristics of liquid coating products according to job specifications, recommendation of liquid coating base, volume calculation per user input, or that customer input may include digital video, photos or digital solid modeling.

One of ordinary skill in the art at the time the invention was made would have been motivated to include plurality of custom colors (claim 29), specific characteristics (claim 30) of liquid coating products according to job specifications (claim 31), recommendation of liquid coating base (claim 32), volume calculation per user input (claim 33), or that customer input may include digital video, photograph or digital solid modeling (claim 34).for the obvious reason that these are normal considerations when selecting liquid coating product bases and colors. Customers may have different requirements.

For example, a mother who wishes to paint her child's room would have had different needs from an industrial customer who wishes to paint many apartments in a condominium complex. Similarly, architects and interior designers have different needs from customers who order liquid coating products to coat the bottom of a yacht, or to coat the outside of a train or the outside of a truck or bus. One of ordinary skill in the art at the time the invention was made would have known to include steps to facilitate customer selections and include requirement characteristics that would facilitate selection of custom colors, base, volume, among others. One of ordinary skill in the art at the time the invention was made also would have known that since customers have specific needs, a

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web site might also include means for a customer to input digital video, digital photograph as well as digital solid modeling.

One of ordinary skill in the art at the time the invention was made would have known that Computer Aided Design and Computer Aided Manufacturing (CAD/CAM) systems have been widely used in industry for several decades. Thus, it would have been obvious to include similar technology in the design of web sites for selection of custom liquid coating products for home improvement and for other uses. By doing so, a manufacturer will increase customer satisfaction, resulting in additional sales and increased profits.

Claims 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Distributor Roles in view of Lowe's Superstore.

Distributor Roles teaches an interactive Internet customer ordering system,

Comprising one or more clients and servers, the network includes a web interface for permitting customers to access and ordering variable quantities of one or more products, including special order products, from various entities, such as manufacturers. *Distributor Roles* discloses that customers receive the orders according to information they provided when placing orders, including appropriate numbers of items, etc.

Distributor Roles **does not** specifically refer to various components of the system as subsystems, and does not specifically refer to a customer order subsystem, a production subsystem, a production line. However, when reading the claims as a whole, the specific names given to portions of the system does

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not patentably distinguish the claimed system. Further, the recited statement of intended use,

does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to name portions of various subsystems by different names in the system taught by *Distributor Roles* because the subjective interpretation of the names of the subsystems does not patentably distinguish the claimed invention.

Lowe's Superstore discloses that home improvement retailers (e.g., HOME DEPOT, LOWE's) sell over 40,000 related home improvement products, including special order, ***custom products such as custom paints***.

It *would have* been obvious to one of ordinary skill in the art at the time the invention was made to combine *Distributor Roles* and *Lowe's Superstores* to disclose ordering, production, packaging and delivery of liquid coatings among other types of products. One of ordinary skill in the art in the art at the time the invention was made *would have* been motivated to combine *Distributor Roles* and *Lowe's Superstores* to disclose ordering, production, packaging and delivery of liquid coatings among other types of products for the obvious reason that liquid coatings are another type of product that is in great demand by customers for home improvements and for home building.

Distributor Roles and *Lowe's Superstore* *do not* specifically address customer assistance in selecting liquid coating product appropriate to a given job as defined by information input by the customer through the interface. *Distributor Roles* does not specifically disclose that assistance in the selection of liquid

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coating includes suggestion of at least one custom color based upon digital input by the customer including at least one of digital video input, digital photograph input, and digital solid modeling input.

Liquid coatings come in different colors. Customers' color tastes vary. Liquid coatings also have properties that allow them to perform better indoors or outdoors. Larger rooms and physical areas often require more paint than smaller spaces. The amount of water-based paint required for a child's bedroom, for example, is much less than the volume of a latex-based paint that one would need to paint the outside of a single-family home. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine *Distributor Roles* and Lowe's Superstore and knowledge generally available to one of ordinary skill in the art to provide customer assistance in selecting liquid coating product appropriate to a given job as defined by information input by the customer through the interface and to disclose that assistance in the selection of liquid coating includes suggestion of at least one custom color based upon digital input by the customer including at least one of digital video input, digital photograph input, and digital solid modeling input.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine *Distributor Roles* and Lowe's Superstore and knowledge generally available to one of ordinary skill in the art to provide customer assistance in selecting liquid coating product appropriate to a given job as defined by information input by the customer through the interface and to disclose that assistance in the selection of liquid coating includes suggestion of

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at least one custom color based upon digital input by the customer including at least one of digital video input, digital photograph input, and digital solid modeling input for the obvious reason that user-friendly sites often generate customer loyalty and increased sales. Such assistance might include, for example, help in product selection, color selection, calculation of volume required as determined by the size of the surface to be covered. Customers often welcome assistance by professionals, and often feel special that manufacturers, for example, are willing to spend the time to assist them.

Allowable Subject Matter

Claim 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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JK
James Zurita
Patent Examiner
Art Unit 3625
15 October 2004


WYNN W. COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600